IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3428 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAHJI RAMCHANDJI THAKORE

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 3428 of 2002

MS BANNA DUTTA FOR AR SHAIKH for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 21-1-2002 passed by the District Magistrate, Patan and he has been declared as

bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. to the detaining authority through advocate on 14-2-2002 and though it was received by the authority, same has not been decided till 10-4-2002 and, therefore, there is a delay in considering the representation. In support of this argument, she has produced xerox copy of the letter dated 10-4-2002 sent by the Home Department, same is ordered to be taken on record. Learned AGP has fairly admitted the same.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, it appears that the detenu has sent the representation on 14-2-2002 through to the detaining authority and though said representation has been received by the authority, same was not decided till 10-4-2002. However, no explanation has been putforward by the authority by filing an affidavit explaining satisfactorily the delay caused in communicating the decision to the detenu. It has been held by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an

order of detentiion is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

6. Since no affidavit has been filed either by the detaining authority or by the State authority and also since no explanation has been putforth by the said authority for not communicating the decision of rejection of his representation till 10-4-2002, the order of detention is illegal and the same cannot be sustained.

7. The petition is allowed. The impugned order of detention dated 22-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Rahji Ramchandji Thakore is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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